

On April 17, 2007 appellant, then a 58-year-old letter carrier, filed an occupational disease claim alleging that he underwent a right hip replacement due to the cumulative effects of

his work activity beginning on March 4, 2004. He did not describe the specific activities that contributed to his condition.<sup>1</sup>

In reports dated March 12 and April 13, 2007, Dr. R. Clio Robertson, an attending orthopedic surgeon, noted the progress of appellant's recovery from total hip arthroplasty on January 17, 2006. He checked "yes" indicating the condition was work related.

On May 1, 2007 the Office requested additional evidence including a detailed description of the employment activities which contributed to his right hip condition and a comprehensive medical report containing a description of his symptoms, the results of examinations and tests, a diagnosis, the treatment provided and medical rationale explaining how his right hip condition was related to specific factors of his employment.

By decision dated June 5, 2007, the Office denied appellant's claim on the grounds that the factual and medical evidence was insufficient to establish that his right hip condition was causally related to factors of his employment.

On July 30, 2007 appellant requested reconsideration and submitted additional evidence.

In a May 25, 2007 report, Dr. Roberson stated that appellant was recovering from right hip total arthroplasty which was performed four and one-half months previously. He provided findings on physical examination and indicated that appellant could return to work with limitations.

In reports dated July 13 to September 19, 2007, Dr. Donald Barney, an attending general practitioner, reviewed the history of appellant's condition and provided findings on physical examination. Appellant indicated to Dr. Barney that repetitive motions in his job as a letter carrier for 16 years caused his right hip pain. He underwent right hip surgery on January 17, 2007 performed by Dr. Roberson. On May 14, 2006 appellant had undergone bilateral knee surgery. Dr. Barney stated that appellant fell on March 4, 2004 and was off work for a few days. In 2005 severe pain caused appellant to stop work again. Dr. Barney diagnosed right hip neuritis secondary to a knee injury, right hip bursitis and right hip osteoarthritis. He stated:

"It is [my] opinion that [appellant's] ongoing condition is causally related to his work duties ... as a letter carrier ... with prolonged walking, standing, lifting, pushing, pulling, resulting in cumulative trauma to the knees thence to his hip."

By decision dated November 5, 2007, the Office denied modification of its June 5, 2007 decision.

On December 17, 2007 appellant requested reconsideration and submitted additional evidence. He submitted reports dated October 31 to November 15, 2007 in which Dr. Barney essentially repeated the information provided in his prior reports.

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<sup>1</sup> Appellant also has a separate claim accepted for a bilateral knee condition.

By decision dated January 11, 2008, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant further merit review. It found that Dr. Barney's reports merely reiterated information in his earlier medical reports.<sup>2</sup>

### **LEGAL PRECEDENT – ISSUE 1**

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical evidence.<sup>3</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>4</sup>

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between his claimed injury and his employment.<sup>5</sup> To establish a causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration, as well as findings upon physical examination of appellant and his medical history, state whether the employment factors caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion.<sup>6</sup>

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<sup>2</sup> Subsequent to the January 11, 2008 Office decision, appellant submitted additional evidence. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

<sup>3</sup> *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>4</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Gloria J. McPherson*, 51 ECAB 441 (2000).

<sup>5</sup> *Donald W. Long*, 41 ECAB 142 (1989).

<sup>6</sup> *Id.*

### **ANALYSIS -- ISSUE 1**

In his reports, Dr. Roberson described the progress of appellant's recovery from total hip arthroplasty on January 17, 2006. He checked "yes" indicating the condition was work related. The Board has held that a physician's opinion on causal relationship which consists only of checking "yes" to a form report is of diminished probative value on the issue of causal relationship.<sup>7</sup> Therefore, Dr. Roberson's opinion regarding causal relationship is not sufficient to establish that appellant's right hip condition was caused or aggravated by his employment.

Dr. Barney provided appellant's opinion that unspecified repetitive motions in his job as a letter carrier for 16 years caused his right hip pain. He diagnosed right hip neuritis secondary to a knee injury, right hip bursitis and right hip osteoarthritis. Dr. Barney stated his opinion that appellant's ongoing right hip condition was causally related to his duties as a letter carrier which included prolonged walking, standing, lifting, pushing and pulling which resulted in cumulative trauma to his knees and then his right hip. However, his opinion is not based on a complete and accurate factual background. The Office asked appellant to provide a detailed description of the employment activities which he believed had contributed to his right hip condition. Appellant did not provide the requested information regarding his job activities. Dr. Barney listed the general physical requirements of a letter carrier but did not specify which activities caused or aggravated appellant's right hip condition or the mechanism of injury, the manner in which a particular activity could have caused or aggravated right hip bursitis and right hip osteoarthritis. He opined that appellant also had right hip neuritis that was related to a previous knee injury. However, Dr. Barney did not provide specific details regarding the knee injury or explain how the knee injury caused right hip neuritis. Appellant failed to provide a comprehensive medical report based on a complete and accurate factual and medical background and containing thorough medical rationale explaining the nature of the diagnosed right hip conditions to the specific employment factors identified. Therefore, he failed to meet his burden of proof to establish that his right hip condition was caused or aggravated by his federal employment.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of the Act<sup>8</sup> vests the Office with discretionary authority to determine whether it will review an award for or against compensation. The Act states:

"The Secretary of Labor may review an award for or against payment of compensation at any time on [her] own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued."

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<sup>7</sup> See Gary J. Watling, *supra* note 4.

<sup>8</sup> 5 U.S.C. § 8128(a).

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by setting forth arguments that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; or (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>9</sup> When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>10</sup>

### **ANALYSIS -- ISSUE 2**

In support of his request for reconsideration, appellant submitted reports from Dr. Barney dated October 31 to November 15, 2007 in which he merely repeated information provided in his earlier reports. Evidence that repeats or duplicates evidence already of record does not constitute a basis for reopening a claim for further merit review.<sup>11</sup> Therefore, these reports from Dr. Barney do not constitute relevant and pertinent evidence not previously considered by the Office.

The Board finds that appellant did not submit arguments or evidence showing that the Office erroneously applied or interpreted a specific point of law, advancing a relevant legal argument not previously considered or constituting relevant and new pertinent evidence not considered previously by the Office. Therefore, the Office properly denied his request for reconsideration.

### **CONCLUSION**

The Board finds that appellant failed to meet his burden of proof in establishing that his right hip condition was causally related to factors of his employment. The Board further finds that the Office did not abuse its discretion in denying his request for reconsideration.

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<sup>9</sup> 20 C.F.R. § 10.606(b)(2).

<sup>10</sup> 20 C.F.R. § 10.608(b).

<sup>11</sup> See *Freddie Mosley*, 54 ECAB 255 (2002).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated January 11, 2008 and November 5 and June 5, 2007 are affirmed.

Issued: August 7, 2008  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board